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SENATE

REPORT
No. 98-228

AVIATION DRUG-TRAFFICKING CONTROL ACT

SEPTEMBER 15 (legislative day, SEPTEMBER 12), 1983.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1146]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1146) to amend the Federal Aviation Act of 1958 to provide for the revocation of the airman certificates and for additional penalties for the transportation by aircraft of controlled substances, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

The bill is intended to expand the powers of the Federal Aviation Administration (FAA) to combat aerial trafficking in drugs. The bill accomplishes this purpose by authorizing FAA revocation of the airman certificate and aircraft registration certificate of those involved in drug trafficking.

BACKGROUND AND LEGISLATIVE HISTORY

In recent years, increasing quantities of illicit drugs have been smuggled into this country by air. A large portion of these drugs are carried aboard light aircraft and ex-military, piston engine transports. Efforts to control this aerial drug trade have been concentrated in two broad areas:

(1) the prosecution of the individuals organizing the shipments and the resulting distribution of drugs; and

(2) the direct interdiction of the aircraft involved and the seizure of the drugs aboard.

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To some degree, law enforcement officers have been hampered in these efforts by an inability to prevent the same pilots and the same aircraft from repeated participation in aerial drug trafficking. Oftentimes, prosecutors do not feel that it is worthwhile to expend limited resources in pursuing a conviction of the pilot. In the absence of such a conviction the FAA currently feels that they have insufficient statutory authority to revoke the pilot's license, or airman certificate. Similarly, unless a drug conviction is secured against the aircraft owner, the FAA is apparently powerless to revoke the aircraft registration.

In an effort to help combat the above difficulties, Senator Bentsen introduced S. 1146, the Aviation Drug-Trafficking Control Act on April 26, 1983. A hearing was held on S. 1146 by the Aviation Subcommittee on July 21, 1983. Witnesses from the Administration testified in general support of the bill. The suggestions of the FAA and the Department of Justice were largely technical in nature. Justice testified that they saw no due process problems with the bill. This opinion was echoed in an analysis of the bill done by the American Law Division of the Congressional Research Service.

S. 1146, as reported, was approved by the Committee on August 2, 1983. Three amendments, offered by Senator Kassebaum, were adopted without objection. These amendments incorporated most of the suggestions offered by the FAA and the Department of Justice at the hearing on the bill.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 8, 1983.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1146, the Aviation Drug-Trafficking Control Act, as ordered reported by the Senate Committee on Commerce, Science and Transportation, August 2, 1983.

This bill amends the Federal Aviation Act of 1958 to provide for the revocation of the airman certificates and for additional penalties for the transportation by aircraft of controlled substances as defined by the Controlled Substances Act. Based on this review, the Congressional Budget Office estimates there is no significant increased cost to the federal government due to enactment of this legislation, and there are no additional costs for state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Rudolph G. Penner, *Director.*

Regulatory Impact

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

The bill as reported would not place any new regulatory burden on the public or the aviation community. Rather it would simply provide the FAA with more effective authority to deal with aviation related drug activities that are already prohibited under current law. As such it should have no privacy, paperwork, or economic impact on individuals, consumers or businesses.

Hopefully the bill will result in an increase in the number of administrative proceedings brought by the FAA for aviation activities related to controlled substances. This increase should be offset, however, by the fact that under the bill, the authority of the FAA and the requirements that it must meet are much more clear cut.

Section-by-Section Analysis

SECTION 1

This section provides that S. 1146 may be cited as the "Aviation Drug-Trafficking Control Act."

SECTION 2

This section amends the 1958 Federal Aviation Act by adding a new subsection (c) to section 609. This new subsection would require the Administrator to revoke a person's airman certification in either of the following two circumstances:

(1) When such a person has been convicted of the violation of any State or Federal felony law relating to controlled substances (other than simple possession) and it is determined that that person knowingly served as an airman in connection with such violation; or

(2) When the Administrator determines that (A) such person has engaged in an activity which he knew, or had reasonable cause to know, was intended to distribute, export, or import a controlled substance, (B) an aircraft was used in such activity, and (C) such distribution, exportation, or importation was not authorized by any Federal or State law.

The situations above are intended to encompass situations in which the airman was serving on a plane that was aiding the illegal transportation such as a spotter plane. In both cases (1) and (2), the airman may answer the charges and is given a right to appeal the determination. The first avenue of appeal from the Administrator's determination would be a full evidentiary hearing before the National Transportation Safety Board. Following that, a judicial review of the Board's order could be obtained pursuant to section 1006 of the act.

Section 2 also provides that the Administrator may not revoke the airman certificate of a person who has been acquitted of charges related

to the activity relied upon for the revocation. Two points should be noted concerning this provision:

(1) The term "acquittal" is not intended to encompass situations in which the charges are merely dismissed; and

(2) The Administrator need not, as a result of this provision, wait until a judicial proceeding involving the subject airman is completed before revoking his or her certificate.

The Committee expects that the FAA will continue to, as they indicated at the hearing, work closely with the Department of Justice so as not to prejudice investigations or prosecutions.

The above comments also apply to the provisions of section 2 that mandate reinstatement of a certificate if the airman is subsequently acquitted.

SECTION 3

This section provides that the administrator shall not issue a new airman certificate to someone who has had their certificate revoked pursuant to the new section 609 (c) for a period of 5 years. The Administrator may, after 1 year, issue a new certificate if he finds that the 5-year period would be excessive or not in the public interest. A denial of a new certificate in the 1–5-year period would not be reviewable. Current law provides for a 1-year revocation upon a drug conviction.

SECTION 4

This section would require the Administrator to revoke the registration of an aircraft based on the following criteria:

(1) Such aircraft has been used in an activity, or to facilitate an activity that is a felony violation of any law (other than simple possession) relating to a controlled substance; and

(2) The use of the aircraft was permitted by such owner who knew, or had reasonable cause to know, that the aircraft was intended to be used in such activity.

The same procedural safeguards apply to the revocation of an aircraft registration certificate as to the revocation of an airman certificate.

SECTION 5

This section creates the following two new offenses in the act:

(1) Any person who forges or alters an airman certificate, or uses false aircraft markings, with the intent to commit any prohibited act relating to controlled substances, shall be subject to a fine and/or jail term; and

(2) Any person who sells a fraudulent certificate with the knowledge it is intended to be used in connection with any prohibited act related to controlled substances, shall be subject to a fine and/or jail term.

The original section 5 of S. 1146 created the new offense of transporting drugs by air without an airman certificate. This section was deleted in mark-up. At the hearing on this bill, the Department of Justice testified that this provision served no useful purpose. Such transportation is already against the law, and the underlying statute provides a

harsher penalty than that specified in the original section 5. The Committee concurred that such a provision would only cause confusion as to the applicable penalty.

SECTION 6

This section provides that the provision of S. 1146, as reported, shall apply to acts and violations occurring after the date of enactment of the bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman) :

FEDERAL AVIATION ACT OF 1958

Section 501 of that Act (49 U.S.C. 1401)

REGISTRATION OF AIRCRAFT NATIONALITY

SEC. 501. (a)—(d) * * *

SUSPENSION OF REVOCATION

(e) (*1*) Any such certificate may be suspensed or revoked by the Administrator for any cause which renders the aircraft ineligible for registration.

(*2*) (*A*) *The Administrator shall issue an order revoking the certificate of registration issued to an owner under this section for an aircraft and each other certificate of registration held by such owner under this section, if the Administrator determines that—*

(i) such aircraft has been used in an activity, or to facilitate an activity that is a felony violation of any State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance) ; and

(ii) the use of the aircraft was permitted by such owner who knew, or had reasonable cause to know, that the aircraft was intended to be used for activity described in clause (i) of this subparagraph.

For purposes of this paragraph, an owner of an aircraft who is not an individual shall be considered to know, or to have reasonable cause to know, the intended use of an aircraft only if a majority of the individuals who control such owner or who are involved in forming the major policy of such owner knew, or had reasonable cause to have known, of such intended use.

(B) Prior to revoking any certificate of registration under this subsection the Administrator shall advise the holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the holder of the certificate of registration an opportunity to answer any charges and be heard as to why such certificate should not be revoked. Any person whose certificate of reg-

istration is revoked by the Administrator pursuant to this subsection may appeal the Administrator's order to the Board and the Board shall, after notice and a hearing on the record, affirm, amend, modify, or reverse the Administrator's order. In the conduct of its hearings, the Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within 60 days after being so advised by the Administrator. The person whose certificate of registration is revoked by the Board's order may obtain judicial review of said order under the provisions of section 1006. The filing of an application for such judicial review shall not stay the effectiveness of the Board's order.

(C) In any proceeding under this paragraph:

(i) the term 'controlled substance' shall have the same meaning given such term by section 102 of the Controlled Substances Act (21 U.S.C. 802);

(ii) no part of the record of such proceeding shall be admitted as evidence in any State or Federal criminal proceeding;

(iii) neither the Administrator nor the Board shall have the authority to revoke any certificate of registration if the owner of such aircraft has been the subject of a criminal indictment or information concerning the alleged illegal activity related to a controlled substance and has been acquitted in a State or Federal court of all such charges; and

(iv) the findings of an appropriate State or Federal court as to any element of proof required by such paragraph shall be conclusive and neither the Administrator nor the Board shall have the authority to review such issue.

(D) Notwithstanding any other provision of this paragraph, in any case in which the Administrator has revoked the certificate of registration of any person as a result of any activity related to a controlled substance and such person is subsequently acquitted of all charges related to such activity in any criminal indictment or information arising from such activity, the Administrator shall issue a certificate of registration to such person if such person is otherwise qualified for such a certificate under the provision of this Act.

(E) Except as provided in subparagraph (F), the Administrator shall not issue a certificate of registration to any person who has had a certificate revoked pursuant to subparagraph (A) of this paragraph during the 5-year period beginning on the date of such revocation.

(F) The Administrator may issue a certificate of registration for an aircraft to any such person before the end of such 5-year period (but not before the end of the 1-year period beginning on the date of such revocation) if the Administrator determines that such aircraft is otherwise eligible for registration under this section and (i) that revocation of the certificate for such 5-year period would be excessive considering the nature of the offense or the act committed and the burden which revocation places on such person, or (ii) that revocation of the certificate for such 5-year period would not be in the public interest.

The determinations under clauses (i) and (ii) of the preceding sentence shall be within the discretion of the Administrator and any such determination or failure to make such a determination shall not be subject to administrative or judicial review.

(f) * * *

Section 602 of that Act (49 U.S.C. 1422)

AIRMAN CERTIFICATES

SEC. 602. (a) * * *

ISSUANCE OF CERTIFICATE

(b) (*1*) Any person may file with the Administrator an application for an airman certificate. If the Administrator finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform the duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Administrator may determine to be necessary to assure safety in air commerce. Except in the case of persons whose certificates are, at the time of denial, under order of suspension or whose certificates have been revoked within one year of the date of such denial, any person whose application for the issuance or renewal of an airman certificate is denied may file with the Board a petition for review of the Administrator's action. The Board shall thereupon assign such petition for hearing at a place convenient to the applicant's place of residence or employment. In the conduct of such hearing and in determining whether the airman meets the pertinent rules, regulations, or standards, the Board shall not be bound by findings of fact of the Administrator. At the conclusion of such hearing, the Board shall issue its decision as to whether the airman meets the pertinent rules, regulations, and standards and the Administrator shall be bound by such decision: *Provided*, That the Administrator may, in his discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

(*2*) (*A*) *Except as provided in subparagraph (B), the Administrator shall not issue an airman certificate to any person whose airman certificate has been revoked pursuant to subsection (c) of section 609 of this title during the 5-year period beginning on the date of such revocation.*

(*B*) *The Administrator may issue an airman certificate to any such person before the end of such 5-year period (but not before the end of the 1-year period beginning on the date of such revocation) if, in addition to the findings required by paragraph (1), the Administrator determines (i) that revocation of the certificate for such 5-year period would be execessive considering the nature of the offense or the act committed and the burden which revocation places on such person, or (ii) that revocation of the certificate for such 5-year period would not be in the public interest. The determinations under clauses (i)*

and (ii) of the preceding sentence shall be within the discretion of the Administrator and any such determination or failure to make such a determination shall not be subject to administrative or judicial review.

(C) Notwithstanding any other provisions of this paragraph, in any case in which the Administrator has revoked the airman certificate of any person pursuant to section 601(c)(1) or (2) as a result of any activity related to a controlled substance and such person is subsequently acquitted of all charges related to such activity in any criminal indictment or information arising from such activity, the Administrator shall issue a certificate to such person if such person is otherwise qualified to serve as an airman under the provisions of this Act.

"(c) * * *

Section 609 of that Act (49 U.S.C. 1429)

REINSPECTION OR REEXAMINATION; AMENDMENT, SUSPENSION, OR REVOCATION OF CERTIFICATION

SEC. 609. (a) * * *
(b) * * *

TRANSPORTATION, DISTRIBUTION OR OTHER ACTIVITIES RELATED TO CONTROLLED SUBSTANCES

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person for any felony violation of a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance) if the Administrator determines that (A) an aircraft was used in connection with the commission of the offense and (B) such person knowingly either served as an airman in connection with the offense or was on board the aircraft in connection with the offense.

(2) The Administrator shall issue an order revoking the airman certificates of any person if the Administrator determines that:

(A) the airman has engaged in an activity which he knew, or had reasonable cause to know, was intended to distribute, import, or export a controlled substance;

(B) an aircraft was used in such activity or to facilitate such activity;

(C) the airman either served as an airman in connection with such activity or was on board the aircraft in connection with such activity;

(D) the controlled substance was not part of the legitimate official supplies of such aircraft;

(E) the controlled substance was not part of the cargo entered in the manifest of an aircraft engaged in the usual course of business of a common or contract carrier certificated to carry cargo under the provisions of this Act; and

(F) the airman (or his employer) was not authorized to distribute, import, or export (as the case may be) the controlled sub-

stance under any State or Federal law or under the authority of any State or Federal agency.

For the purpose of subparagraph (F) of this paragraph, if the Administrator determines that the airman (or his employer) was not registered to distribute, import, or export (as the case may be) the controlled substance in question pursuant to section 303 of the Controlled Substances Act (21 U.S.C. 823) or section 1007 of the Controlled Substances Import and Export Act (21 U.S.C. 957), the burden of proof shall be on the airman to establish that he (or his employer) was authorized to distribute, import, or export (as the case may be) such controlled substance under any State or Federal law or under the authority of any State or Federal agency. This paragraph is intended to reach activity occurring within the territorial jurisdiction of the United States, or without the territorial jurisdiction of the United States, or both.

(3) Prior to revoking an airman certificate under this subsection, the Administrator shall advise the holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the holder of such certificate an opportunity to answer any charges and be heard as to why such certificate should not be revoked. Any person whose certificate is revoked by the Administrator pursuant to this subsection may appeal the Administrator's order to the Board and the Board shall, after notice and a hearing on the record, affirm, amend, modify, or reverse the Administrator's order. In the conduct of its hearings, the Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within 60 days after being so advised by the Administrator. A person whose certificate is revoked by the Board's order may obtain judicial review of said order under the provisions of section 1006. The filing of an application of such judicial review shall not stay the effectiveness of the Board's order.

(4) In any proceeding pursuant to this subsection, the findings of an appropriate State or Federal court as to any element of proof required by this subsection shall be conclusive and neither the Administrator nor the Board shall have the authority to review such issue.

(5) In any proceeding pursuant to paragraph (2) of this subsection:

(A) neither the Administrator nor the Board shall be required, or have the authority, to determine if any activity constitutes a violation of any State or Federal law relating to a controlled substance;

(B) no part of the record of such proceeding shall be admitted as evidence in any State or Federal criminal proceeding; and

(C) neither the Administrator nor the Board shall have the authority to revoke the airman certificate of any person who has been the subject of a criminal indictment or information concerning the activity related to a controlled substance and who has been acquitted in a State or Federal court of all charges related to such activity.

(6) For the purposes of this subsection, the terms "controlled substance" and "distribute" shall have the same meaning given such terms by section 102 of the Controlled Substances Act (21 U.S.C. 802) and the terms "import" and "export" shall have the same meaning given such terms by section 1001 of the Controlled Substances Import and Export Act (21 U.S.C. 951).

Section 902 of that Act (49 U.S.C. 1472)

CRIMINAL PENALTIES

SEC. 902. (a) * * *

FORGERY OF CERTIFICATES AND FALSE MARKING OF AIRCRAFT

[(b) Any person who] *(b)(1) Except as provided in paragraph (2), any person who* knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly [uses or attempts to use] *sells, uses, attempts to use, or possesses with intent to use* any such fraudulent certificate, and any person who knowingly and willfully displays or causes to be displayed on any aircraft, any marks that are false or misleading as to the nationality or registration of the aircraft, shall be subject to a fine of not exceeding $1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment.

(2)(A) Any person who violates paragraph (1) of this subsection (other than by selling a fraudulent certificate) with the intent to commit any act prohibited by any State or Federal felony law relating to controlled substances (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding 5 years, or both.

(B) Any person who violates paragraph (1) of this subsection by selling a fraudulent certificate with the knowledge that the purchaser intends to use such certificate in connection with any act prohibited by any State or Federal felony law relating to controlled substances (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding 5 years, or both.

(C) For purposes of this paragraph, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act.

(c)—(p) * * *

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